IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7357 of 1988

with

CIVIL APPLICATION NO. 3032 OF 1994

AND

CIVIL APPLICATATION NO. 161 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law a : NO

JJJJ

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/01/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Pahwa for the petitioners and Mr. Mazgaonkar, learned advocate for the respondent University. In this petition, the petitioners have raised grievance about non regularization of the services of the petitioners because they are working since many years as daily rated wagers. The petitioners have also challenged the selection in the post of junior clerk cum typist and junior clerk and have prayed that the petitioners may be absorbed on the said posts as well as peon with all consequential benefits. Meanwhile, the prayer for interim relief was made by the petitioners in terms of para 7(D) of the petition for directing the respondents not to terminate the services of the petitioners and to permit the petitioners to work to the posts where each petitioner was presently working and to offer them the time scale and allowances equivalent to the same as being offered to the regularly appointed employee in the respective cadres. In this petition, by order dated 16.1.1989, notice was issued returnable on 31.1.1989 and meantime, status quo regarding service conditions of the petitioners was granted which was extended from time to time and has continued to operate till this date. In this petition, affidavit in reply was filed by the respondents and rejoinder thereto has also been filed by the petitioners.

Learned advocate Ms. Sangeeta Pahwa appearing for the petitioners has submitted that the grievances of the petitioners would be satisfied if the respondents would grant the benefits according to the scheme framed by the apex court reported in AIR 2001 SC 706. On the other hand, learned advocate Mr. Mazgaonkar appearing for the respondent university has made a statement before this COurt that the petitioners who have continued in service in view of the interim orders passed by this Court will be given the benefits as per the decision of the apex court reported in AIR 2001 SC 706. One controversy has remained between the parties to the effect that in case of petitioner No. 5 Bageliya Govindbhai Kanjibhai who was in service at the time of grant of interim relief but this factual aspect has been disputed by the respondent university. However, during the course of hearing, learned advocate Mr. Mazgaonkar

appearing for the respondent University has submitted that if the petitioner No.5 Bageliya Govindbhai Kanjibhai is prepared to report for duty as a fresh employee without claiming any back wages for the intervening period and if he gives undertaking to that effect, then, the respondent University will definitely consider his case for reinstatement with continuity of service on notional basis without back wages for the intervening period in view of the principles laid down by the apex court in case of Gujarat Agriculture University vers. Rathod Labhu... reported in AIR 2001 SC 706. In short, it is his submission and statement made before this COurt that the case of petitioner No.5 for reinstatement will be considered by the respondent University with continuity in service on the basis of the aforesaid decision of the apex court provided that the petitioner No.5 gives an undertaking before the respondent University that he will not claim back wages for the intervening period. Learned advocate Ms. Pahwa appearing for the petitioners has submitted that in fact, the petitioner No.5 was in service at the time when the interim relief was granted by this Court and thereafter he had repeatedly requested the respondent University by various letters that he is entitled for the benefits of the interim relief granted by this Court and time and again prayers were made by petitioner no.5 before the respondent University for reinstatement but the respondents have not taken into account such requests made by the petitioner No.5. However, in view of the statement made by Mr. Mazgaonkar, she has submitted that this Court may pass appropriate orders so that there may not be any future uncertainty in respect of the right of employment and regularization of respondent No.5.

I have considered the submissions made by the learned advocates for the parties. Considering submissions made by the learned advocates for the parties and also considering the fairness of the statement made by Mr. Mazgaonkar that if the petitioner No.5 is prepared to work with the respondent University without claiming any back wages for the intervening period, then, the respondent University is prepared to consider the case of petitioner No.5 for reinstatement in service on the basis of the aforesaid decision of the apex court, according to my opinion, instead of directing the respondent university to consider, it would be better and in the interest of justice to direct the respondent university to reinstate petitioner no.5 as a daily wager without any back wages for the intervening period and to consider his case on notional basis and to consider his case for regularization in light of the observations made

by the apex court in decision reported in AIR 2001 SC 706.

Accordingly, it is directed to the respondent University to reinstate petitioner no.5 as a daily wager without any back wages for the intervening period and to consider the case of petitioner No.5 for regularization and continuity in service on notional basis and to consider his case for regularization in light of the observations made by the apex court in decision reported in AIR 2001 SC 706.Respondent University is also directed to reinstate the petitioner No.5 as a daily wager within one month from the date of filing of undertaking by petitioner no. 5 that he will not claim any back wages for the intervening period. Petitioner No.5 is also directed to file necessary undertaking to the above effect that he will not claim any back wages for the intervening period, within fifteen days from the date of receipt of copy of this order. After such undertaking is filed by the petitioner no.5, respondent University shall have to pass order of reinstatement of the petitioner no.5 as a daily wager and thereafter to consider the case of the petitioner for regularization in service as per the decision of the apex court reported in AIR 2001 SC 706 within two months thereafter and to consider his case on notional basis. In light of the aforesaid observations and directions, this petition is disposed of. Rule is accordingly discharged with no order as to costs. Interim relief granted earlier shall stand vacated.

In view of the above orders passed in special civil application no. 7357 of 1989, civil application no. 3032 of 1994 and 161
Application no. 3032 of 1994 and 161 of 1995 are accordingly disposed of. Rule issued in civil application no. 3032 of 1994 shall stand discharged. There shall be no order as to costs.

Dt.10.1.2002. (H.K. Rathod,J.)